IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HARRISON FRANKLIN,

Plaintiff,

OPINION AND ORDER

v.

13-cv-452-wmc

DYLON RADTKE,

Defendants.

State inmate Harrison Franklin filed this civil action pursuant to 42 U.S.C. § 1983 challenging conditions of his confinement in the Wisconsin Department of Corrections ("WDOC"). He has been found eligible to proceed without prepayment of the filing fee and he requests leave to proceed. Because he is incarcerated, the court is required by the Prison Litigation Reform Act ("PLRA") to screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In addressing any *pro se* litigant's pleadings, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, Franklin's request for leave to proceed must be denied for the reasons set forth below.

FACTS

At all times pertinent to the complaint, Franklin has been confined at the Columbia Correctional Institution ("CCI") in Portage. The defendant, Dylon Radtke, is employed as a correctional officer at CCI with the rank of administrative captain.

The claims in this case stem from a lawsuit filed by Franklin in the United States District Court for the Eastern District of Wisconsin. In *Franklin v. Beth*, Case No. 05-cv-916, plaintiff Franklin and another inmate filed suit against law enforcement officers and nurses employed at the Kenosha County Jail, claiming that the conditions were unsanitary and that they were denied adequate medical care, among other things.

On March 27, 2008, Radtke filed an affidavit in Case No. 05-cv-916 in his capacity as supervisor of the segregation unit at CCI. Radtke's affidavit focused mainly on Franklin's custodial status and the procedures used by inmates at CCI to access the law library. The defendants in that lawsuit offered Radtke's affidavit in response to Franklin's allegation that he lacked adequate access to both the law library and legal materials as the result of his placement in segregated confinement. Radtke noted in his affidavit that Franklin was placed in the segregation unit for 180 days beginning February 29, 2008, where he had limited access to the law library. In addition to his placement in segregation, Radtke noted further that Franklin had been placed in "Observation Status" on three days, October 25 and November 5, 2007, and February 14, 2008.

On May 9, 2008, Radtke filed a second affidavit in the same case with additional information about Franklin's custodial status and the procedures used by inmates to access the law library while in segregated confinement at CCI. The affidavit also provided additional information about the three occasions in which Franklin was placed in observation status, mentioning that this placement was necessary for "clinical" reasons.

Radtke explained that Franklin's ability to access his legal materials was limited during those times.

By providing these affidavits to defense counsel in Case No. 05-cv-916, Franklin contends that Radtke disclosed private information about his psychological or mental state in violation of his right to privacy. Franklin maintains further that Radtke committed a crime by disclosing "protected health information" without a court order or Franklin's consent. Franklin seeks compensatory damages in the amount of $2 million and punitive damages in the amount of $100,000.00.

OPINION

A complaint may be dismissed for failure to state a claim where the plaintiff alleges too little, failing to meet the minimal federal pleading requirements found in Fed. R. Civ. P. 8. In that respect, Rule 8(a) requires a "'short and plain statement of the claim' sufficient to notify the defendants of the allegations against them and enable them to file an answer." *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). While it is not necessary for a plaintiff to plead specific facts, he must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). While there is no heightened pleading requirement for *pro se* prisoner civil rights complaints, the complaint should be dismissed "without further ado" if a complaint pleads facts showing that the plaintiff does not have a claim. *Thomson v. Washington*, 362 F.3d 969, 970-71 (7th Cir. 2004). In other words, any plaintiff may "plead himself out

of court" by including allegations which show that he has no valid claim. *Lekas v. Briley*, 405 F.3d 602, 613-14 (7th Cir. 2005) (citations omitted).

Here, Franklin invokes 42 U.S.C. § 1983 as the basis for federal jurisdiction. Section 1983 authorizes an action for damages from civil rights violations committed by any person acting under the color of state law. To state a claim under § 1983, a plaintiff must allege — at a minimum — the violation of a right protected by the Constitution and laws of the United States. *See Baker v. McCollan*, 443 U.S. 137, 140 (1979); *see also Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009) (reciting the elements required to make a claim under § 1983). For reasons discussed briefly below, Franklin's allegations do not rise to that level.

As Franklin notes in his complaint, casual disclosure of an inmate's HIV-positive status to other inmates or to non-medical personnel may violate an inmate's constitutional right to privacy. *See Woods v. White*, 689 F. Supp. 874 (W.D. Wis. 1988). The Seventh Circuit has recognized, however, that there is no clearly established right to privacy where an inmate's medical status is concerned. *See Anderson v. Romero*, 72 F.3d 518, 525, 527 (7th Cir. 1995) (holding that an official was entitled to qualified immunity for disclosing an inmate's HIV status to other inmates and prison staff); *see also Roe v. City of Milwaukee*, 26 F. Supp. 2d 1119, 1125 (E.D. Wis. 1998) (reaching a similar conclusion). Assuming that a right to privacy exists with respect to an inmate's medical information, Franklin does not establish that a violation of that right occurred in this instance.

The affidavits in this case were submitted by the defendants in Case No. 05-cv-916 in response to Franklin's claim that he lacked adequate access to the law library and his legal materials due to his custodial classification at CCI. Therefore, the disclosure that Franklin complains of was not casually made with intent to cause harm as was the case in *Woods*. To the contrary, because Franklin placed his custodial classification in issue while litigating Case No. 05-cv-916, he does not otherwise articulate any valid justification for keeping those records private.

What is even more important, the affidavits at issue contain no information showing that Franklin suffered from any particular medical or psychiatric condition. At most, the affidavits disclose Franklin's placement in disciplinary segregation and his limited assignment to observation status for clinical monitoring. Assuming that Franklin's allegations are true, he does not demonstrate that Radtke disclosed information of a medical or psychological nature and he fails to establish a violation of the right to privacy. Because Franklin does not otherwise establish a constitutional violation, his complaint fails to state a claim upon which relief may be granted under 42 U.S.C. § 1983.

ORDER

IT IS ORDERED that:

1. Plaintiff Harrison Franklin's request for leave to proceed is DENIED and his complaint is DISMISSED with prejudice as legally frivolous.

2. The dismissal will count as a STRIKE for purposes of 28 U.S.C. § 1915(g).

Entered this 24th day of June, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge